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In The

Supreme Court of the United States

October Term, 1980

LOCAL 9, INTERNATIONAL CHEMICAL WORKERS UNION, AFL-CIO,

Petitioner,

vs.

ARTHUR EISENBERG, Regional Director of the Twenty-second Region of the NATIONAL LABOR RELATIONS BOARD, for and on behalf of the NATIONAL LABOR RELATIONS BOARD,

Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

STANLEY S. SPECTOR
Attorney for Petitioner
615-623 Bangs Avenue
Asbury Park, New Jersey 07712
(201) 774-6279

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REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner Local 9, International Chemical Workers Union, AFL-CIO respectfully submits this reply brief in support of its petition for a writ of *certiorari* to the United States Court of Appeals for the Third Circuit.

ARGUMENT

I.

The issue is not moot.

Contrary to respondent's contentions (Memo in Oppo. 4) the distinction set forth in the case of *Weinstein v. Bradford,* 423 U.S. 147, 149 (1975) clearly sets forth that this is a case "capable of repetition, yet evading review" and falls with the rule of *Super Tire Engineering Co. v. McCorkle,* 416 U.S. 115 (1974). The petitioner in this case is still continually embroiled in cyclical bargaining with the same employer for the employees at the same facility and the governmental action or policy of not providing discovery has adversely affected a present interest and is a threat to do so in the future and again the strike probably will not last long enough for judicial review.

Furthermore, the same situation may and will arise again and again and still be incapable of review at other facilities throughout the country where construction gates are used by employers. Therefore, employees may be entitled to discovery, but will never be able to get discovery, because of the inability to obtain judicial review.

For the reason set forth herein, this Court should determine that this issue is not moot.

II.

Courts should be permitted to grant discovery in 10(L) proceedings.

10(L) proceedings are expedited proceedings heard on short notice by orders to show cause. Discovery motions would not be heard until after the Court acts. The Union has to show affirmatively that the outside contractors are doing their work. The Union loses a basic right to picket when they are enjoined. Therefore, the discovery should be granted immediately so that a Union can protect its rights in the hearing itself or move to have the injunction dissolved where the appropriate facts are discovered.

CONCLUSION

For the reasons stated herein and for the reasons stated in the petition, it is respectfully requested that a writ of *certiorari* issue to review the judgment of the United States Court of Appeals.

Respectfully submitted,

STANLEY S. SPECTOR
Attorney for Petitioner